



Atty. Dkt. No. 024918-0123

1/12 DAE \$

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Yoshinori FUKUI et al.

Title: METHOD OF SCREENING A SUBSTANCE  
INTERFERING IN THE ASSOCIATION OF  
DOCK2 AND ELMO

Appl. No.: 10/535,223

International 11/14/2003  
Filing Date:

371(c) Date: 03/27/2006

Patent No.: 7,541,153

Grant Date: 06/02/2009

Examiner: Cherie Michelle Woodward

Art Unit: 1647

Confirmation 9403  
Number:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**UNDER 37 C.F.R. §1.705**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on June 2, 2009 as U.S. Patent No. 7,541,153.

The Patent Office determined that the patent was entitled to 325 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C.

§154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office’s interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of “overlap” are limited to “periods of time . . . [that] occur on the same day.” *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays “occur on the same day.” *Id.*

Applicants have recalculated PTA for the captioned patent under the court’s interpretation of the PTA statute, and have determined that the patent is entitled to 697 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	698 days
(b) Total Applicant delay:	1 day
Final PTA Determination:	697 days

Applicants therefore respectfully request that the patent be accorded 697 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date July 29, 2009

By Michael D. Kaminski

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### Patent Term Adjustment Calculation System

Docket Number: 024918-0123  
Application Number: 10/535223  
Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
<a href="#">Edit</a> <a href="#">Delete</a>	Priority Date	11/26/2002	-912		
<a href="#">Edit</a> <a href="#">Delete</a>	International Filing Date	11/14/2003	-559		
<a href="#">Edit</a> <a href="#">Delete</a>	National Stage Transmittal (NOT all 371(c) Requirements Met)	05/17/2005	-9		
	PCT National Stage Commencement Date	05/26/2005	0		
<a href="#">Edit</a> <a href="#">Delete</a>	Notice of Missing Requirements	12/30/2005	218		
<a href="#">Edit</a> <a href="#">Delete</a>	Response to Notice of Missing Requirements	03/27/2006	305		
<a href="#">Edit</a> <a href="#">Delete</a>	National Stage Entry (All 371(c) Requirements Met)	03/27/2006	305		
	14 month From Application date	05/27/2007	731		
<a href="#">Edit</a> <a href="#">Delete</a>	Restriction Requirement	04/17/2008	1,057	326	
<a href="#">Edit</a> <a href="#">Delete</a>	Restriction Requirement Response Received at PTO	05/13/2008	1,083		
	3 Year Period Starts	05/26/2008	1,096		
<a href="#">Edit</a> <a href="#">Delete</a>	Non-Final Office Action	08/11/2008	1,173		
	Non-Final Office Action + 3 months	11/11/2008	1,265		
<a href="#">Edit</a> <a href="#">Delete</a>	Non-Final Office Action Rsp. Rcv'd at PTO	11/12/2008	1,266		1
<a href="#">Edit</a> <a href="#">Delete</a>	Notice of Allowance	02/06/2009	1,352		
<a href="#">Edit</a> <a href="#">Delete</a>	Issue Fee Paid	04/20/2009	1,425		
<a href="#">Edit</a> <a href="#">Delete</a>	Patent Grant Date	06/02/2009	1,468	372	
Totals:				698	1
PTA:				697	

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